

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

.....
SOLAE, LLC,)
)
Plaintiff,)
)
vs.) Case No. 4:03CV00732 HEA
)
ARCHER DANIELS MIDLAND COMPANY)
and AMERIFIT NUTRITION, INC.)
)
) JURY TRIAL DEMANDED
Defendants.)
)
.....)

**PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIMS
OF DEFENDANT ARCHER DANIELS MIDLAND COMPANY**

Plaintiff Solae, LLC ("Solae" or "Plaintiff"), by and through its attorneys, replies to Defendant, Archer Daniels Midland Company's, Answer and Counterclaims to Plaintiff's Complaint ("ADM's Answer"), as follows:

1. Paragraphs 1-29 of ADM's Answer are responses to the allegations in Solae's Complaint to which no response is necessary or appropriate.

ADM's Affirmative Defenses

Invalidity

2. Solae denies the allegations contained in paragraph 30 of ADM's Answer.
3. Solae denies the allegations contained in paragraph 31 of ADM's Answer.

Non-Infringement

4. Solae denies the allegations contained in paragraph 32 of ADM's Answer.

5. Solae denies the allegations contained in paragraph 33 of ADM's Answer.

Counter-Claim

Declaratory Judgment

6. Solae admits the allegations contained in paragraph 34 of ADM's Answer.
7. Solae does not have sufficient information to admit or deny the allegations contained in paragraph 35 of ADM's Answer.
8. Solae admits that paragraph 36 of ADM's Answer purports to state a counterclaim for a declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 5,990,291 ("the '291 patent") and U.S. Patent No. 6,562,380 ("the '380 patent") under the patent laws of the United States, Title 35 United States Code.

9. Solae admits the allegations contained in paragraph 37 of ADM's Answer.
10. Solae admits the allegations contained in paragraph 38 of ADM's Answer.
11. Solae admits the allegations contained in paragraph 39 of ADM's Answer.
12. Solae admits the allegations contained in paragraph 40 of ADM's Answer.

COUNT I - Invalidity of the '291 patent

13. Paragraph 41 of ADM's Answer realleges the allegations contained in paragraphs 34-40 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40 in ADM's Answer, as set forth in paragraphs 6-12 above.

14. Solae denies the allegations contained in paragraph 42 of ADM's Answer.

COUNT II - Invalidity of the '380 patent

15. Paragraph 43 of ADM's Answer realleges the allegations contained in paragraphs 34-40 and 42 of ADM's Answer. In response, Solae realleges and incorporates by reference its

responses to paragraphs 34-40 and 42 in ADM's Answer, as set forth in paragraphs 6-12 and 14 above.

16. Solae denies the allegations contained in paragraph 44 of ADM's Answer.

COUNT III - Non-Infringement of the '291 patent

17. Paragraph 45 of ADM's Answer realleges the allegations contained in paragraphs 34-40, 42 and 44 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40, 42 and 44 in ADM's Answer, as set forth in paragraphs 6-12, 14 and 16 above.

18. Solae denies the allegations contained in paragraph 46 of ADM's Answer.

COUNT IV - Non-Infringement of the '380 patent

19. Paragraph 47 of ADM's Answer realleges the allegations contained in paragraphs 34-40, 42, 44 and 46 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 34-40, 42, 44 and 46 in ADM's Answer, as set forth in paragraphs 6-12, 14, 16 and 18 above.

20. Solae denies the allegations contained in paragraph 48 of ADM's Answer.

WHEREFORE, Plaintiff Solae requests judgment dismissing Defendant ADM's counterclaims in all respects, and for such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable in this action.

Respectfully Submitted,

LEWIS, RICE & FINGERSH, L.C.

Dated: April 21, 2004

By: /s/ C. David Goerisch
Andrew Rothschild, #4214
C. David Goerisch, #77207
Michael J. Hickey, #101931
500 North Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 444-7600 – Telephone
(314) 241-6056 – Facsimile
E-mail: arothschild@lewisrice.com
dgoerisch@lewisrice.com
mhickey@lewisrice.com

Patricia A. Carson
Thomas F. Fleming
KAYE SCHOLER LLP
425 Park Avenue
New York, NY 10022
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
E-mail: pcarson@kayescholer.com
tfleming@kayescholer.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of April, 2004, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following persons:

Stephen H. Rovak
Michael T. Marrah
Kirill Y. Abramov
Sonnenschein, Nath & Rosenthal LLP
One Metropolitan Square, Suite 3000
St. Louis, MO 63102

David K.S. Cornwell
Timothy J. Shea, Jr.
Donald R. Banowit
Sterne, Kessler, Goldstein & Fox, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

/s/ C. David Goerisch